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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,121	04/23/2004	Jacques Habatjou	119426	9007
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OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850			EXAMINER BOECKMANN, JASON J	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/830,121

Applicant(s)

HABATJOU, JACQUES

Examiner

Jason J. Boeckmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-17, 19-34, 36-38 and 40-46 is/are rejected.
- 7) ☒ Claim(s) 8, 18, 35, 39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Due to the applicant's request for an oral hearing and the subsequent filing of an appeal brief on 10/15/2007, the finality of the office action of 4/19/2007 is hereby withdrawn.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hinged mirror of claim 39 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-7, 9-17, 19, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schilling (DE 3517122) in view of Rookard, Jr. (4,272,768).

Schilling shows a spray gun comprising: a spray mechanism (1), and a reservoir containing a substance for spraying, the reservoir is arranged to be removably mounted to the device, the reservoir comprising; a substance outlet passage (11, 7), a closure member (6) to close the passage when the reservoir is not mounted on the device. The closure member opens in response to the reservoir being mounted on the device (4), wherein the substance comprises a cosmetic or a care product (paint is both a cosmetic and a care product). Schilling does not specifically disclose that the reservoir comprises a first partition, first and second compartments capable of containing the substance, the compartments being arranged to feed the spray mechanism with the substance and being disposed on either side of the first partition,

However, Rookard, Jr. shows a reservoir comprising a first partition (6) defining first and second compartments (the right and left compartments shown in figure 1).

Therefore, It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to add the partition of Rookard, Jr.'s reservoir to the reservoir of Schilling in order to prevent uncontrollable sloshing which results in a stable reservoir even when partially full as taught by Rookard, Jr.(column 2, lines 39-41).

Regarding claims 2, 5 and 6, the partitions of Rookard, Jr. that are being added to Schilling's reservoir include a second partition (on the right side of figure 1) on one side of the first partition that defines two sub-compartments (top and bottom) that are in communication with each other, a third partition (on the left side of figure 1) located on the other side of the first partition defining two sub-compartments (top and bottom), the first partition being between the second and third partitions (figure 1).

Regarding claim 7, the reservoir of Shilling includes a base portion (30) and a lid-forming portion (19) fitted on the base portion (figure 1).

Regarding claims 9-11, the substance outlet passage (7, 11) is defined at least by an end piece (7) which projects from the reservoir (figure 1), the end piece including a sealing O-ring (12).

Regarding claim 13, the device of Shilling includes a fastener (5) arranged to cooperate by complementary shapes with the spray mechanism (1).

Regarding claim 12, Schilling as modified by Rookard, Jr. shows all aspects of the applicant's invention as in the rejection of claim 1 above, but does not specifically disclose that the reservoir is partially transparent. However, transparent reservoirs are

common in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to make a portion of the reservoir transparent in order to see how much substance is left in the reservoir.

Regarding claim 14, the substance is sprayed in response to a suction created by a vector gas (inherently part of the spray gun in figure 1).

Regarding claim 16, the spray mechanism includes a control member to control the vector gas and the substance to be sprayed (figure 1).

Regarding claim 19, the first and second compartments are not in communication other than via the substance outlet.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schilling (DE 3517122) in view of Rookard, Jr. (4,272,768) further in view of Coffee (4,306,685).

Schilling as modified by Rookard, Jr. shows all aspects of the applicant's invention as in the rejection of claim 1 above, but does not specifically disclose that the check valve is a ball check valve. However, Coffee shows a ball check valve (42) for a pressurized container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to substitute the ball check valve of Coffee for the check valve of Schilling as modified by Rookard, Jr. in order to create a more uniform seal when the valve is closed.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schilling (DE 3517122), in view of Krautzberger (1,603,612).

Schilling shows a spray device comprising a spray mechanism (1) including a housing and a reservoir (3) containing a substance to be sprayed capable of being releasably mounted to the device so that the substance can be selectively dispensed from the spray mechanism, the reservoir comprising a closure member (6) to close the passage when the reservoir is not mounted on the device, wherein, the closure member opens in response to the reservoir being mounted on the device (4), but does not specifically disclose that the housing has a vector gas supply.

However, Krautzberger shows a paint spray gun that includes a reservoir and housing for receiving a vector gas supply. The vector gas supply enters the device through element 6b and is used to propel the substance being sprayed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to connect a vector gas supply to the housing of the device of Schilling, in order to propel the substance being sprayed for the reservoir to the article to be sprayed.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krautzberger (1,603,612), in view of Schilling (DE 3517122).

Krautzberger shows a spray device comprising a spray mechanism (8) including a housing for receiving a vector gas supply (6b) and a reservoir (3) containing a substance to be sprayed capable of being releasably mounted to the device so that the substance can be selectively dispensed from the spray mechanism, but does not

specifically disclose that the reservoir comprises a closure member to close the passage when the reservoir is not mounted on the device, wherein, the closure member opens in response to the reservoir being mounted on the device.

However, Schilling shows a spray device with a reservoir that includes a closure member (6) to close the passage when the reservoir is not mounted on the device, wherein, the closure member opens in response to the reservoir being mounted on the device (4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention add the closure member (6) of the reservoir of Schilling, to the reservoir of Krautzberger, in order to have the reservoir automatically seal when it is removed from the device to prevent leakage of the substance being sprayed.

Claims 21-34, 36-38, 40-42 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krautzberger (1,603,612), in view of Bara (US 2003/0108487)

Krautzberger shows a spray device for spraying at least one substance contained in a reservoir (3), the substance being taken from the reservoir by suction created at an outlet orifice of the reservoir by a stream of vector gas coming from inlet 6b (lines 20-25), the device comprising an adjustment valve (5) for adjusting a flow rate of the sprayed substance and a control member (15) capable of being operated by a user to act both on a vector gas dispenser valve (20) and the adjustment valve (5), the adjustment valve comprising a plunger (5) arranged to co-operate with an associated seat (figure 1) so that the flow rate of the sprayed substance varies with the spacing

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between the seat and the plunger, the substance comprising a cosmetic or a care product (paint is both a cosmetic and a care product), but does not specifically disclose that the vector gas is stored in a pressurized receptacle.

However, Bara shows a device for spraying a product that includes a supply of vector gas that is contained in a receptacle (101), and used to draw a fluid from a second container by creating a vacuum just as in the device of Krautzberger.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to use the pressurized receptacle (101) of Bara's invention to carry the vector gas (or compressed air) of the device of Krautzberger, and have it be connected to the device at the air inlet 6b. This modification would allow the spray device to be portable and independent of an outside vector gas supply.

Regarding claims 22-24, the control member is a pivoting lever (figure 1) and the dispenser valve is secured to the pressurized receptacle and is triggered by tilting a control rod.

Regarding claims 25 and 27, the seat is situated on a support piece (8) for supporting the nozzle, and the support piece is releasably fastened to the device (figure 1).

Regarding claim 26,

Regarding claims 28 and 33, the reservoir is removable (figure 1) and the plunger is slidable in a direction parallel to the direction along which the substance is sprayed (figure 1).

Regarding claims 29-32, the device of Krautzberger, as modified by Bara above, shows all aspects of the applicant's invention as in the rejection of claim 21 above, but does not specifically disclose that the device comprises two outlet nozzles for the vector gas and an outlet for the substance, with the two vector gas outlet nozzles converging in a direction going away from the device and the substance outlet orifice comprises an axis substantially in a same plane as the vector gas outlet nozzles.

However, Bara shows a spraying device comprising two outlet nozzles for the vector gas (7) and an outlet for the substance (6), with the two vector gas outlet nozzles converging in a direction going away from the device and the substance outlet orifice comprises an axis substantially in a same plane as the vector gas outlet nozzles (figures 1-4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to substitute the two vector gas nozzles (7) and the substance outlet (6) of Bara's spraying device for the nozzle configuration of the device of Krautzberger, as modified by Bara above, in order to suck the substance into the flow of the vector gas more efficiently due to having two nozzles of vector gas orientated towards each other, as well as to atomize the substance being sprayed.

Regarding claim 34, the device includes a housing (6b) for receiving the pressurized container as shown in figure 1.

Regarding claims 36 and 37, the device does not include a return spring for the plunger. However, it is well known in the art to use a return spring to return a valve needle back to a valve seat. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to add a return spring to the device in order to return the plunger back to its seat automatically.

Regarding claim 38, the device includes an end piece, (the linkage in the handle of the device in figure 1) arranged to be engaged on a control rod of the dispenser valve, wherein the control member is arranged to be capable of pressing against the end piece.

Regarding claims 40 and 41, the device is generally elongate in shape and the control member comprises a pressure face on a longitudinal side of the device and the pressurized container and the reservoir are held together in a fixed manner (via the device housing).

Regarding claim 42, the device of Krautzberger, as modified by Bara above includes a micro-orifice opening to the ambient air when the reservoir is empty and the valve is slightly open.

Allowable Subject Matter

Claims 8, 18, 35 and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 1/11/2007 have been fully considered but they are not persuasive.

Regarding applicants remarks towards claim 20, Schilling shows spray apparatus comprising a housing (the gun housing) for receiving a vector gas supply (the air that is used to propel the paint). When the air (vector gas) supply is connected to the housing, the housing is receiving a vector gas supply, and is therefore "for receiving a vector gas supply."

In response to applicant's argument that there is no suggestion to combine the references of Schilling and Rookard as applied to claim 1, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rookard teaches partitions inside a reservoir to prevent uncontrollable sloshing, which is the motivation to add the partitions to the reservoir of Schilling. Schilling as modified by Rookard teaches the structure of the present invention, but do not specifically disclose to spray a cosmetic product. In regards to the applicant's arguments toward the spraying of the cosmetic product, the examiner asserts that it would have been obvious to one of ordinary skill in the art to use the

device of Schilling as modified by Rookard to spray a cosmetic substance to improve a persons appearance.

In response to applicant's argument that Hauptman does not show that "a suction is created at an outlet orifice of the reservoir" as recited in the preamble of claim 21, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In addition, the recitation has been given little patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

The pressurized receptacle of Hauptman is shown as number 4 in figure 1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason J. Boeckmann whose telephone number is (571) 272-2708. The examiner can normally be reached on 7:30 - 5:00 m-f, first Friday off.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JJB

JJB 11/21/08


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